



THE UNIVERSITY *of* EDINBURGH

## Edinburgh Research Explorer

### Citizenship and Political Participation

**Citation for published version:**

Shaw, J 2011, Citizenship and Political Participation: The Role of Electoral Rights under European Union Law. in B Fanning & R Munck (eds), *Globalization, Migration and Social Transformation: Ireland in Europe and the World*. Ashgate Publishing, pp. 81-92.

**Link:**

[Link to publication record in Edinburgh Research Explorer](#)

**Document Version:**

Peer reviewed version

**Published In:**

Globalization, Migration and Social Transformation

**Publisher Rights Statement:**

© Shaw, J. (2011). Citizenship and Political Participation: The Role of Electoral Rights under European Union Law. In B. Fanning, & R. Munck (Eds.), *Globalization, Migration and Social Transformation*. (pp. 81-92). Ashgate.

**General rights**

Copyright for the publications made accessible via the Edinburgh Research Explorer is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

**Take down policy**

The University of Edinburgh has made every reasonable effort to ensure that Edinburgh Research Explorer content complies with UK legislation. If you believe that the public display of this file breaches copyright please contact [openaccess@ed.ac.uk](mailto:openaccess@ed.ac.uk) providing details, and we will remove access to the work immediately and investigate your claim.



# University of Edinburgh

School of Law

Working Paper Series

No 2010/22

## **Citizenship and Political Participation: The Role of Electoral Rights Under European Union Law**

*Forthcoming in*

B Fanning and R Munck (eds) *Immigration and the Irish Experience of European and Global Social Transformation* (Ashgate, London, 2010/11)

**Professor Jo Shaw**

Salvesen Chair of European Institutions  
University of Edinburgh School of Law

[jo.shaw@ed.ac.uk](mailto:jo.shaw@ed.ac.uk)  
[www.law.ed.ac.uk/staff/joshaw](http://www.law.ed.ac.uk/staff/joshaw)



This text may be downloaded for personal research purposes only. Any additional reproduction for other purposes, whether in hard copy or electronically, requires the consent of the author(s). If cited or quoted, reference should be made to the name(s) of the author(s), the title, the number, and the working paper series

© 2010 Jo Shaw  
Edinburgh School of Law Working Paper Series  
University of Edinburgh

**Abstract**

As a contribution to a collection focusing on immigration in Ireland, this paper provides the broader EU political and legal context to issues of political participation of non-citizens in domestic elections. The paper surveys both the EU electoral rights themselves, under the EU Treaties, and also the intersection between these rights and national political practices which grant, or deny, political participation rights to all migrants, regardless of whether they are EU citizens or third country nationals.

**Keywords**

European Union, citizenship, immigration, Ireland, political participation, electoral rights.

## **Citizenship and Political Participation: The Role of Electoral Rights Under European Union Law**

### **1. Introduction**

One of the innovations incorporated into the European Union constitutional framework since the Treaty of Maastricht has been a set of provisions establishing and governing 'citizenship of the Union'. This is not a concept of citizenship which is comparable to the package of citizenship rights normally attaching to citizenship at the level of the state, but it does generate a surprisingly wide range of social, economic and political rights, in large measure through the operation of the equal treatment principle. This protects the rights of EU citizens resident in Member States other than the one of which they are nationals. This implies the right to be treated on the same basis as the citizens of the host state, unless there are substantial grounds to justify a difference in treatment.

Thus, as part of this package, EU citizens are given the right to vote and to stand for election—on the basis of residence, not citizenship—in the Member State where they are resident, in local and European Parliamentary elections.<sup>1</sup> This might not seem the most obvious avenue via which the EU could be thought to contribute to the evolution of immigrant integration through the medium of democratic participation, as these rights are restricted to EU citizens alone—that is to say, the nationals of the Member States. They do not speak to the largest group of residents in the EU who are not citizens of the state in which they reside, namely those who are citizens of third states. Looked at from one point of view, EU electoral rights could be derided as yet another element of so-called Fortress Europe, with one set of rules for those who have the magic key, namely the passport of a Member State, and another set of rules for those who do not. That view is buttressed by the increasingly illiberal approach of many Member States to migration from non-EU Member States, as well as to issues such as the acquisition of permanent residence status and citizenship itself (e.g. in the form of stringent integration tests or discretionary processes). Moreover, it is important to note that since the accession of twelve states from Central and Eastern Europe in 2004 and 2007, many of whose citizens are resident in the other Member States under a variety of national and transnational schemes rather than under the auspices of EU law where transitional provisions have been applied in different formats by all Member States—although to a lesser degree by Ireland and the United Kingdom—some of the legal and cultural differences between 'intra-EU free movement' and 'immigration' in the classic sense have been elided. East-West migration has become rather politicised in many Member States.

It is argued, on the contrary, that the view that EU electoral rights should be regarded as largely irrelevant to wider issues of immigration and integration is an overly narrow approach. Such an approach fails to see these rights, and the access to the political process which they deliver, in their wider context (Shaw 2007). In this paper, a twofold view of this context is taken. First, we should understand these rights as a laboratory for non-citizen electoral participation, since they represent a unique and comprehensive

---

<sup>1</sup> Article 9 TEU (Treaty on European Union) and Articles 20–25 TFEU (Treaty on the Functioning of the European Union). These are the applicable provisions since the entry into force of the Treaty of Lisbon on 1 December 2009, superseding Articles 17–22 EC (Treaty establishing the European Community). Article 22 TFEU specifically deals with electoral rights for EU citizens. For the relevant texts see <http://eudo-citizenship.eu/eu-citizenship/documentation>.

experiment across twenty-seven states, not only in relation to municipal electoral rights, but also in relation to the EU's 'own' elections, for the European Parliament. The notion of EU electoral rights as a laboratory for political participation by non-citizen residents is discussed in the next section which explains in more detail what these rights are, how they work, and what effects they have had. This section concludes that studying electoral rights for those residents who lack the citizenship of the host state offers a case study which helps us to understand better the transformation of traditional state-centric concepts of citizenship rights into broader concentric and overlapping circles of membership affiliations, where the links between rights and belonging have partially been severed. Related to this we see the emergence of a multilayered and polycentric concept of European citizenship where the EU and national dimensions are mutually constitutive (Besson and Utzinger 2008).

Second, at the national level, the existence of the specific *EU* electoral rights can have an impact upon reform debates within the political domain and within wider civil society about the possibility of widening the franchise to include *all* residents of the host state who lack citizenship. For example, for states which have traditionally espoused a narrow 'national' definition of *demos* in the sense of who can decide about the common future, perhaps one bolstered by strict interpretations of the relevant constitutional provisions by a Constitutional Court, the very existence, exercise and impact of EU electoral rights can widen the range of possible options for policy-makers, even if the taking of such options first demands significant constitutional amendments, as was the case when many of the then Member States ratified the Treaty of Maastricht. Significant constitutional amendments to implement the electoral rights included in that Treaty had to be adopted, amongst others, by Spain, France and Germany. More generally, it can be observed that when states begin to tinker with issues such as the boundaries of political membership, the knock-on effects of any proposed change are often more complicated than might be thought in the first instance. In other words, the various dimensions of polity-building are interconnected. Issues of political membership cannot be seen in isolation, but are related also to the rules and procedures on acquisition and loss of citizenship, the requirements of EU law on citizenship and electoral rights (and specifically the evolution of a concept of EU citizenship, albeit one with only a weak political dimension), as well the national context of the rules and procedures governing the arrival and settlement of migrants and the rights of national and ethnic minorities within the state (and across the state boundaries in the case of kin state minorities). Finally, votes for resident non-citizens also need to be viewed in the context of the participation rights of non-resident citizens: internal and external inclusivity in relation to the franchise do not always go hand in hand. Indeed, more research is needed to understand fully the relationship between the internal and external franchises along the axes of inclusivity/exclusivity, as well as in relation to so-called ethnic preferences. This is a particularly pressing issue in the states of central and eastern Europe. In any event, all of these elements, along with an awareness of the constellations of relevant local, subnational, national and international actors such as political parties, NGOs and other stakeholder groups, need to be brought into the equation in order to explain how and why particular rules on the franchise have developed (or failed to develop, as the case may be).

This contribution is not directly about the Irish experience with voting rights for non-citizens. However, it does engage indirectly with the issues raised by the broad franchise for local elections (including the right to stand for election) established in

Ireland since 1972, but regarded only as politically salient since 2004. This was the year when the candidacy of non-Irish residents for elections (and the voting rights of non-citizen residents) emerged as a political issue, fostered by NGO campaigns, but also the year when Irish citizens voted in a referendum to constrain the constitutional scope of birthright *ius soli* in respect of children who do not have at least one parent who is a citizen or is *entitled to be a citizen* (Shaw 2007: 251–263). Given the discretionary nature of Irish naturalisation law, this is a very difficult condition to prove (Handoll 2010). For commentators on immigration and citizenship questions, the notion of Ireland as exclusively a country concerned with the issues of emigration was so dominant that adjustment to thinking about immigration and the frequently circular nature of human mobility has involved quite dramatic shifts in thinking. These are shifts that have also demanded a serious rethink about the very nature of the Irish state, as the events of 2004 demonstrated, and as the chapters in this collection demonstrate. In addition, the nature of political relations within the island of Ireland and across and between these islands has also been engaged when the topic of political rights has been on the agenda. This has been particularly evident in relation to the voting rights which UK citizens have enjoyed in Ireland since the adoption of the Electoral (Amendment) Act 1985 in *Dáil* elections, which reciprocate the longstanding rights to vote in *all* UK elections which Irish citizens continue to enjoy. As these points amply show, Ireland now represents an excellent case study country for those seeking to put national practices in relation to the definition of political membership into a wider context. This paper aims to provide at least some of that wider context which in turn helps to deliver a better understanding of the Irish case.

## **2. The case of EU electoral rights as a laboratory**

It was amendments to the EC Treaty brought about as a result of the Treaty of Maastricht in 1993 which introduced electoral rights for EU citizens into the Treaty framework. However, there exists a substantial hinterland to this initiative dating back to the 1960s. Since that time, some of the institutions of the then European Communities, notably the Commission and the Parliament, had been discussing a number of initiatives which could give nationals of the Member States the right to vote in certain elections on the basis of residence, not nationality. This debate linked the possibility of Member State nationals voting in their state of residence in European Parliament elections to the wider impetus to democratise, through the direct elections which took place from 1979 onwards, the ‘Assembly’ which was originally composed of appointed members. In the case of local elections, it linked the perceived need to engage with the human and political dimensions of immigration to the economic freedoms of movement for workers and the self-employed included in the original EEC Treaty, with a view to giving these freedoms a wider social dimension (Connolly *et al* 2006). Thus EU electoral rights are doubly rooted in debates about how the European institutions could gain legitimacy both by enabling formal participation rights for all citizens, not just mobile ones, through a new parliamentary organ intended to play a central role in future legislative processes and political preference expression and by ensuring that the processes of European integration fostered migrant integration in the host state through political participation, at a time when most Member States still viewed the growth of immigration as a temporary phenomenon based on a guest-worker paradigm, feeding hungry labour markets without the need for a broader package of social, economic and family rights.

Several scholars have carefully tracked the piecemeal construction of the citizenship ‘resources’ which became the Maastricht package of citizenship rights from 1993 onwards (Wiener 1998, Maas 2007). The ‘story’ since 1993 would probably be—from the perspective of the idealism animating a deepening of European integration which underpinned the work of the key political elites in the formative period—seen as rather disappointing. In the process of implementation,<sup>2</sup> Member States took advantage of possibilities to water down the impact of the rights. For example, Luxembourg, with its high percentage of resident citizens of other EU Member States, was permitted to impose lengthy qualifying residence periods which in practice make it very hard for those EU citizens to gain the right to vote in local elections, and force them to rely—so far as they exist—on the expatriate and external voting rights provided by their Member State of citizenship for European Parliament elections (Lewis 1998). France (Collard 2010) was allowed to retain a prohibition on EU citizens becoming mayors of towns and cities, as mayors participate in the French *sénat* and thus in *national* political decision-making. In Germany and Austria, with their federal systems, in cases of ‘city states’ (e.g. Hamburg and Vienna) the participation rights of EU citizens have been restricted to the very lowest and often practically powerless level of ‘community councils’, and EU citizens are excluded from participating in the city councils which double as ‘state-level’ legislatures, because of the constitutional powers of the latter. On the other hand, in the United Kingdom, an opposite and much broader approach was taken, and thus resident EU citizens who are on the local electoral register are also allowed to vote and to stand for election in elections for the devolved assemblies and bodies in parts of the UK (Scottish Parliament, Assembly of Wales, Northern Ireland Assembly, Greater London Assembly). In other words, in the UK, EU citizens can participate politically in relation to organs of the state which are given legislative or quasi-legislative powers under primary UK legislation such as the Scotland Act 1998.

The story regarding the exercise of the rights is also rather dispiriting from the point of view of those who perhaps naïvely held high hopes that the political element of European citizenship could represent a turning point for the legitimization of the EU as a polity. The European Commission has not been able, through the questionnaires it has issued to Member States, to gather effective comprehensive data on the extent to which the electoral rights, especially in relation to local elections, are exercised.<sup>3</sup> Quantitative data, such as it exists (e.g. Collard 2010), points in the direction of low levels of participation (even in comparison to the existing low levels of participation in most Member States in local elections) both in terms of registration and actual voting. Very few EU citizens take advantage of the right to stand for election (and even fewer achieve election), and there are rather low levels of interactive engagement between the electoral rights and political parties. Quite a number of EU citizens who are elected in fact stand as independent candidates, operating outwith the ‘normal’ party systems (Fanning 2010). Qualitative data on the ‘experience’ of free movement, even among elite groups, collected by Favell (2008, 2010) points to a low level of awareness both of

---

<sup>2</sup> Council Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, OJ 1993 L329/34; Council Directive 94/80/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, OJ 1994 L368/38.

<sup>3</sup> The most recent European Commission report on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections dates from 2002: COM(2002) 260 and is very incomplete.

the existence of the rights and—more generally—to an individual or group’s identity as a ‘free mover’. On that basis, it could be argued that EU electoral rights simply do not matter, and that their relevance to effective integration in the host state pales into insignificance in comparison to other matters such as access to employment, employment and welfare state benefits all of which are provided under EU law. Of course, there are exceptions to this lack of awareness or concern, as some research has shown (e.g. Collard, 2010; Méndez Lago 2005), highlighting positive synergies between the existence of the electoral rights and particular clusters of EU citizens to be found in rural or semi-urban settings, especially in France and Spain. Moreover, it emerges from the Commission’s periodic reports on citizenship that there are regular complaints from EU citizens resident outside their home state about their exclusion from democratic participation, whether in terms of the effects of the Luxembourg residence rules, or because they are excluded, as are UK citizens after fifteen years of residence outside the UK, both from external voting in the UK and residence-based voting in the host state in all national elections, unless they choose to naturalise.<sup>4</sup> However, here problems may arise in the case of states which do not tolerate dual citizenship, whether as the ‘sending’ state or as the ‘receiving’ one. The boundaries of the suffrage and the national rules on acquisition and loss of citizenship are thus inextricably linked. While problems in this regard may not prompt mass mobilisation or popular action, or even substantially engage the attention of political parties, the complaints that the Commission does actually receive in fact demonstrate some degree of elite-level concern about the potential negative impact of free movement upon political participation rights more generally, if those who exercise free movement rights but decline (or are unable) to acquire the host state citizenship will have fewer rights to participate in some elections as a result of this.

Leaving aside the issues of implementation, the subject of a hitherto yet to be adopted amendment proposal from the Commission in 2006 regarding voting rights in European Parliament elections,<sup>5</sup> not to mention periodic information campaigns sponsored by the Commission, some national governments (who are under an obligation in this area), NGOs especially at the EU level, and some political parties (Fanning *et al* 2009, Shaw 2007: 263–269), EU lawyers have mounted a number of speculative arguments about how EU electoral rights might be expanded through treaties, case law or even autonomous or coordinated national action. Kochenov (2009), for example, has focused on the scope and nature of the free movement rights themselves, arguing that the actual or potential negative impact of free movement on political participation rights, including in relation to national elections and almost all regional elections in federal states, represents an obstacle to the exercise of free movement rights, which has dissuasive effects on the motivation of EU citizens towards mobility. It will therefore fall within the material scope of EU law, as do other areas of national action which are not within the competence of the EU as a legislature (e.g. the organisation of national educational systems, the national rules on surnames, and most recently certain rules on the removal of nationality fraudulently acquired through naturalisation). In such a context, the Court of Justice has already consistently required Member States to justify

---

<sup>4</sup> E.g. Commission Fourth Report on Citizenship of the union (1 May 2001–30 April 2004), COM(2004) 695 at 8–9.

<sup>5</sup> Proposal for a Council Directive amending Directive 93/109/EC of 6 December 1993 as regards certain detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals COM(2006) 791.



the proportionality of the impact of their rules (i.e. to weigh the dissuasive effects on EU citizens against the utility of the underlying goal of the relevant rule),<sup>6</sup> and Kochenov has argued that the Court of Justice should see national rules on electoral rights in the same light. He argues that this follows naturally from the Court of Justice's expansive approach to citizenship more generally.

Such a change could come about purely as a result of a shift in judicial interpretation of the relevant rules, and would depend upon the Court of Justice being faced with a suitable challenge brought before a national court, which is then referred to it for a preliminary ruling on certain questions of EU law formulated by the national court. In fact, EU citizens have not shown much inclination to litigate their (denial of) rights in national courts hitherto. In any event, what is important is that this approach does not imply any change to the underlying primary rules of the game.

An alternative route would involve the Member States resolving to alter the EU's own constitutional documents—i.e. the founding treaties—in order to impose the same equal treatment obligation on Member States in relation to national (and state) elections as was introduced by the Treaty of Maastricht in respect of European Parliament and local elections. Although there exists under the EU treaties the possibility for a simplified procedure for the amendment of the citizenship provisions, reinforcing their developmental character (Article 25 TFEU), in practice it is not likely that such an initiative would be adopted and neither Article 25 nor its predecessor provision in the EC Treaty have ever been used. Any such amendment would need the unanimous consent of the Member States in the Council of Ministers, and ratification at the national level through normal procedures (which might in some cases involve a national referendum). It is hard to see the political will arising at the present time for such an innovation which would be seen as a substantial incursion into national sovereignty and into the politics of national citizenship, even if its link to the free movement rights of EU citizens could be proven. An alternative incremental approach relying upon a bottom-up impetus from the Member States to initiate change in the field of electoral rights could see them deciding individually to grant the right to vote in national elections to some, or all, resident EU citizens. Of course, this is precisely what Ireland did in the mid-1980s for UK citizens, recognising the importance of instituting reciprocity with the electoral rights of Irish citizens in the UK who, along with Commonwealth citizens (i.e. the Maltese and the Cypriots amongst EU citizens), can vote and stand in any UK election. At the time of the necessary constitutional amendment, and the ensuing legislative change, the Irish legislature opened a gateway to giving voting rights in the *Dáil* to resident citizens of other EU Member States, on the condition of reciprocity. The reciprocity condition has yet to be triggered. An additional gloss upon a Member State-led initiative could be the possibility of the Member States negotiating a framework convention outwith the scope of the existing treaties which might structure the conditions under which such rights should be exercised in an endeavour to encourage progress where thus far there has been none (e.g. uniform qualifying residence periods; registration arrangements; protections against fraud, etc. etc.) (Shaw 2007: 199–201).

---

<sup>6</sup> See most recently in relation to the withdrawal of a naturalisation decision where the applicant had committed a fraud: Case C-135/08 *Rottmann v Freistaat Bayern*, judgment of 2 March 2010.

Finally, it can be argued that much the same effect can be achieved by allowing a universal possibility for migrant EU citizens to hold dual citizenship in the sending and receiving state, even—perhaps—through a quasi-automatic process of ascription, rather than via the ordinary naturalisation rules, or indeed by Member States introducing universal and time-unlimited external voting for their citizens resident in other EU Member States. However, the latter solution would raise questions in many Member States under domestic non-discrimination provisions, as it could end up treating external citizens resident in EU Member States and those resident in third countries differently, without a justified rationale.

The conclusion to be drawn from this section is that the potential of EU electoral rights to be, or to become, a laboratory in which states experiment with more porous boundaries of the traditionally rather impermeable boundaries of the suffrage has yet to be fully realised. This restrictive conclusion is all the more notable given that the states involved are already locked together in an extensive economic, political and legal integration process where mutual trust is assumed in relation to the operation of many fields of law and legal procedure, including several areas close to national sovereignty such as criminal law and criminal process, as well as the less contentious fields of consumer protection and product standards. Ireland stands out an exception in that context, although its recognition of residence-based voting in national elections is strictly limited.

Despite this negative conclusion, it is still important to see the EU electoral rights as part of a more general trend towards blurring the boundaries of national citizenship across the Member States, partly as a result of EU citizenship and the overall package of free movement rights from which it originally stemmed. Moreover, the roots of EU electoral rights in an impetus towards democratisation—however limited the achievements thus far in this direction have been—suggest that citizenship in and across the EU and its Member States has been transformed in substantial ways over the past twenty years or so, as a result of a combination of treaty action, legislative measures, national implementation, judicial interpretation and the citizenship practices of EU citizens themselves, even though the latter's embrace of EU citizenship is hardly comprehensive at this stage. Citizenship therefore needs to be understood in the EU context as a multi-level and multi-perspectival concept, no longer sustained by the boundaries of the sovereign Westphalian state.

Building on these conclusions, we shall now turn in the next section to another area where it is possible to see a dynamic interaction between EU electoral rights and the context in which they operate, that is the question whether the right to vote (and to stand) in local elections is extended in EU Member States *only* to resident EU citizens in accordance with the requirements of EU law, or is also extended to all third country nationals with a settled residence, as it is in the case of Ireland and a number of other Member States. Here too we can see that well-established concepts of *national* citizenship are placed under critical scrutiny as we turn to look at electoral rights not just for EU citizens, who benefit from their own form of 'supranational' citizenship, but also for third country nationals, who are covered by a much weaker network of international norms which speak broadly in favour of increasing the rights of migrants and of equalising the rights of resident citizens and non-citizens, but which fall far short of the framework of electoral and other rights established under EU law.

### **3. Electoral rights for non-citizens: the wider context of national reform**

Hitherto, in addition to Ireland, the following EU states have instituted electoral rights for third country nationals with stable residence (i.e. satisfying a qualifying residence period): Belgium, Luxembourg, Netherlands, Denmark, Sweden, Finland, Estonia, Lithuania, Hungary, Slovakia and Slovenia (European Parliament 2007; Shaw 2007: 76–82). In some significant cases, these rights predate the institution of electoral rights for EU citizens (Ireland, Netherlands and the Nordic states). All bar Belgium, Luxembourg, Estonia, Hungary and Slovenia have granted also the right to stand for election. Unsurprisingly, there is considerable overlap between this group of states and the EU Member States which have ratified or signed the 1992 Council of Europe Convention on the Political Participation of Foreigners in Local Life.<sup>7</sup> In a number of states there are also arrangements for limited groups of third country nationals to vote in local elections either on the basis of historic ties (Commonwealth citizens in the UK) or on the basis of reciprocity arrangements (often, but not always, coupled with historic ties). Reciprocity arrangements exist in the Czech Republic (not so far used), in Portugal (where the absence of local democratic elections in quite a number of Portugal's ex-colonies in Africa limits, in practice, the possibility of reciprocity being effectively instituted), and in Spain (hitherto only applied to Norway, but extended as of 2009 towards a number of states with historic links in Latin America such as Argentina, Colombia and Peru, and other European states where reciprocity applies such as Iceland). The aim in Spain is for these arrangements for third country national voting rights to be in place in time for the local elections in 2011 and to apply to those with five years of residence (Escalante 2009).

As with EU electoral rights, there are difficulties associated with the exercise of these rights. Once again, the level of political participation tends to be lower than in resident citizen population. However, campaigns and wider political engagement of political parties and NGOs do seem to be able to make a difference in relation to turnout, as the Irish example in 2004 and 2009 has shown.<sup>8</sup>

As Rodriguez (2010) has argued, it is hard to discern clear patterns driving the decision to grant or to deny voting rights for third country nationals in local elections, across groups of states. A comparison of the United States, New Zealand and Ireland, states which all have a history and/or a present practice of alien suffrage, indicates that there is no fixed relationship between granting electoral rights, the constitutional structure of given polities, or evolving perceptions of immigration and its challenges. Rodriguez concludes that 'a society's decision to adopt a particular set of alien suffrage practices reflects its own political culture' (Rodriguez 2010: 49). She also pays account to the role of constitutional practices in this context. This is particularly evident in circumstances where—as in Ireland—there have been constitutional blockages to political decisions to widen the suffrage, although in the majority of cases—unlike Ireland—the political will to alter the constitution in order to accommodate voting rights has often not been forthcoming, except where this has been mandated in order to accommodate EU electoral rights which Member States are obliged to implement.

---

<sup>7</sup> ETS No. 144; opened for signature on 5 February 1992; entered into force on 1 May 1997. Interestingly enough, Italy has ratified the Convention, but does not permit non-EU citizens to vote in local elections. It entered a reservation in respect of the part of the Convention concerned with electoral rights, and ratified only those parts concerned with political freedoms. See <http://www.conventions.coe.int/>.

<sup>8</sup> See most recently 'Number of migrants voting in local elections rises 44%', Irish Times, 16 June 2010 (<http://www.irishtimes.com/newspaper/ireland/2010/0616/1224272616926.html>).

Constitutional blockages continue to restrain subnational entities where political opinion differs from the national-level mainstream from enacting and implementing rights for third country nationals in local elections in Germany and Austria (Shaw 2009a).

Moreover, as she indicates, the decision to grant or to deny electoral rights to non-nationals does not in and of itself link to a specific direction which a given polity is taking in relation to the broader issue of immigrant incorporation. In other words, it does not map directly onto what might be viewed as an overall open or restrictive policy focus.<sup>9</sup> Nor is there necessarily a direct relationship between approaches to electoral rights and the possibility of citizenship acquisition, either via the time limits, conditions and procedures attaching to naturalisation, or via the willingness of certain polities (e.g. Germany in recent years and Ireland still, under certain conditions) to give *ius soli* citizenship to the children of non-citizen migrants. On the other hand, in the context of political argument about whether or not to extend local electoral rights to third country nationals, it is clear that political parties in some polities such as Germany and Austria have adopted recognisable positions which can be related to their wider positions on migration and citizenship issues. Thus those on the left see giving electoral rights in advance of the acquisition of citizenship as a dimension of a pathway *towards* integration and those on the right see political participation as a reward for a specific step *of* integration, namely the voluntary acquisition of citizenship through naturalisation which, in those polities given their positions on dual citizenship, requires third country nationals to give up the citizenship of birth. At the same time, in those same polities, the barriers erected by constitutional courts can have a chilling effect on political debate on these matters, given the enhanced parliamentary majorities needed for constitutional amendments (Shaw 2007: 298). It is, in sum, very hard to generalise about how polities engage with the challenge of the boundaries of the suffrage in relation to the citizenship criterion commonly used in most electoral laws for most purposes to restrict the right to vote. In addition to the context provided by migration politics (including shifts between emigration and immigration), constitutional definitions of ‘the people’ and the wider political culture including the role of political parties and the quality of citizenship as a status all need to be taken into account when making a judgment. Furthermore, a quite different story about political inclusion and exclusion needs to be told in respect of the new post-2004 and post-2007 Member States which have been profoundly affected in the post Cold War years not only by political, economic and legal modernisation and transition, but also by the shorter and longer term legacies of boundaries changes and the break up of various empires and communist federal states. In post-empire contexts, there are also different meanings attaching to notions of nationalities and minorities which colour decisions about whether or not to grant voting rights to non-citizens (Shaw 2009b), not to mention examples of significant external pressure from international organisations.

When commentators stand back and reflect upon the normative context of political participation rights in the form of electoral rights for non-citizens, they tend to focus on the relevance of theories of democratic participation, whether liberal, republican or communitarian in inspiration. Widening suffrage is about trying to match the *demos* with decision-making processes in an acceptable way, and many commentators have argued that it is relatively straightforward from this point of view to argue for a broader

---

<sup>9</sup> Broad indicators of the openness or restrictiveness of approaches to migrant integration are provided by the Migrant Integration Policy Index, which is a collaborative project sponsored by the European Commission: <http://www.integrationindex.eu/>.

suffrage than is commonplace at present (Rodriguez 2010; Lardy 1997; Beckmann 2006). But the widening of the suffrage must also engage a notion of citizenship which is appropriate in complex polities with multiple levels and sites of authority, and where populations are relatively mobile even if much mobility is increasingly politicised, problematised and even stigmatised. Furthermore, as Bauböck has shown (Bauböck 2009), external citizenship is often vitally important for understanding a polity's broad approach to ascribing membership, and yet internal and external inclusivity often do not go hand in hand, or operate cogently in relation to each other. Indeed, models of membership (Lansbergen and Shaw 2010) are hard, in practice, to match to actually existing political circumstances, especially in polities such as the United Kingdom, where the status of citizenship and its associated rights and duties resemble a historical bricolage more than they do a coherent constitutional design (Sawyer 2010). So when the historical patchwork of voting rights for Commonwealth and Irish citizens came under threat in a report commissioned by then Prime Minister Gordon Brown from the former Attorney General Lord Peter Goldsmith,<sup>10</sup> it quickly became apparent that excluding Irish citizens from the UK franchise except where demanded by EU law would be massively complicated by the implications that such a move would have in Northern Ireland under the terms of the Good Friday Agreement.

#### **4. Conclusions**

The primary aim of this paper was to outline the framework for electoral rights for EU citizens under the EU Treaties, and then to place this special regime which protects only a restricted and privileged group of resident non-citizens into a wider context. Placing the legal framework in context allows us to address a number of key questions about the evolving nature of citizenship in the European Union and its Member States, and about how more abstract debates about the intersection of sovereignty, citizenship and suffrage can mix with the politics and policies of immigration and immigrant incorporation in host polities. Ireland has a unique mix of 'voluntary' arrangements (local electoral rights for non-EU citizens and limited national electoral rights for UK citizens) and those mandated by EU law, and it is intriguing to see how the two have moulded together, especially so far as political mobilisation is concerned (Fanning 2010). The scope of voting rights is a regularly contested issue within most polities—if not always at the macro constitutional level, then certainly at the level of implementation and especially in relation to mobilisation around such rights. Voting rights for resident non-citizens start to look particularly threatening in any polity where they start to make a difference, hence there is often a delicate conversation to be pursued where polities both uphold the political participation rights of persons who position might be construed as citizens-in-waiting and, at the same time, seek to encourage those same persons to become full members of the polity through the process of naturalisation.

---

<sup>10</sup> Lord Goldsmith QC, *Citizenship: Our Common Bond*, Citizenship Review, March 2008; available from <http://www.justice.gov.uk/reviews/citizenship.htm>.

## Bibliography

- Bauböck, R (2009) 'The rights and duties of external citizenship', 13 *Citizenship Studies* 475–499
- Beckmann, L (2006) 'Citizenship and Voting Rights: Should Resident Aliens Vote?', 10 *Citizenship Studies* 153–165
- Besson, S and Utzinger, A (2008) 'Toward European Citizenship' 39 *Journal of Social Philosophy* 185–208
- Collard, S (2010) 'French Municipal Democracy: Cradle of European Citizenship?' 18 *Journal of Contemporary European Studies* 91–116
- Connolly A, Day S and Shaw, J (2006) 'Alien Suffrage in the European Union: Contested and Incomplete?' in R Bellamy, D Castiglione and J Shaw (eds) *Making European Citizens*, Basingstoke: Palgrave, 31–55
- Escalante, S (2009) Voting Rights for Non-EU Immigrants: Local Impacts of Expanding Immigrant rights in Spain, March 2009, [http://www.urban.illinois.edu/griplab/Docs/Immigrant%20voting%20rights\\_Sar a.pdf](http://www.urban.illinois.edu/griplab/Docs/Immigrant%20voting%20rights_Sar a.pdf)
- European Parliament (2007) *Trends in the EU-27 regarding participation of third-country nationals in the host country's political life*, Study for European Parliament DG Internal Policies of the Union prepared by Florian Geyer on behalf of the Centre for European Policy Studies, July
- Fanning, B (2010) 'Immigrants in Irish Politics: African and East European Candidates in the 2009 Local Government Elections, *Irish Political Studies*, forthcoming
- Fanning, B, O'Boyle, N and Shaw, J (2009), *New Irish Politics: Political Parties and Immigrants in 2009*, available online at: <http://www.ucd.ie/mcri/indexnrireport2.html>
- Favell, A (2008) *Eurostars and Eurocities: Free Movement and Mobility in an Integrating Europe* Oxford: Blackwell
- Favell, A (2010) European Identity and European Citizenship in three "Eurocities": A sociological approach to the European Union, 30 *Politique européenne* 187–224
- Handoll, J (2010) *Country Report: Ireland*, EUDO Citizenship Observatory, RSCAS/EUDO-CIT-CR 2010/22, <http://www.eudo-citizenship.eu>
- Kochenov, D (2009) 'Free Movement and Participation in the Parliamentary Elections in the Member State of Nationality: an Ignored Link?' 16 *Maastricht Journal of European and Comparative Law* 197–233
- Lardy, H. (1997) 'Citizenship and the right to vote', 17 *Oxford Journal of Legal Studies* 75–100

- Lansbergen, A and Shaw, J (2010) 'National Membership Models in a Multi-Level Europe' 8 *International Journal of Constitutional Law (I-CON)* 50-71
- Lewis, J (1998) 'Is the 'Hard Bargaining' Image of the Council Misleading? The Committee of Permanent Representatives and the Local Elections Directive' 36 *Journal of Common Market Studies* 479-504
- Maas, W (2007) *Creating European Citizens* Lanham, MD: Rowman and Littlefield
- Méndez Lago, M. (2005) 'The participation of non-national EU citizens in Spanish local elections' Paper prepared for the ESF/LESC-SCSS Exploratory Workshop: *Citizens, non-citizens and voting rights in Europe*, Edinburgh, 2-5 June 2005
- Rodriguez, C (2010) 'Noncitizen voting and the extraconstitutional construction of the polity' 8 *International Journal of Constitutional Law (I-CON)* 30-49
- Sawyer C (2010) *Country Report: United Kingdom*, EUDO-Citizenship Observatory, RSCAS/EUDO-CIT-CR 2010/34
- Shaw J (2007) *The Transformation of Citizenship in the European Union* Cambridge: Cambridge University Press 2007
- Shaw J (2009a) 'Political Rights and Multilevel Citizenship in Europe' in E Guild, K Groenendijk and S Carrera (eds) *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU* Farnham: Ashgate 29-49.
- Shaw (2009b) 'Citizenship and Enlargement: the outer limits of EU political citizenship' in C Barnard and O Odudu (eds) *The Outer Limits of EU Law* Oxford: Hart Publishing 63-88
- Wiener, A (1998) *'European' Citizenship Practice*, Boulder, CO: Westview Press